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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/528,917	03/23/2005	Peter R Ebner	MAX 02.01CIP	9044
27667	7590	03/09/2007	EXAMINER	
HAYES, SOLOWAY P.C. 3450 E. SUNRISE DRIVE, SUITE 140 TUCSON, AZ 85718			WOODALL, NICHOLAS W	
		ART UNIT	PAPER NUMBER	
		3733		
SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE		DELIVERY MODE	
3 MONTHS	03/09/2007		PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No.	Applicant(s)	
	10/528,917	EBNER, PETER R	
	Examiner Nicholas Woodall	Art Unit 3733	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 04 December 2006.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1,53,70,86 and 88-127 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) 53,88 and 112-127 is/are allowed.
- 6) Claim(s) 1,70,86,90,92-95,97-100,102,104 and 108 is/are rejected.
- 7) Claim(s) 89,91,96,101,103,105,106 and 109-111 is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 04 December 2006 is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This action is in response to applicant's amendment received on 12/04/2006.

Drawings

2. The drawings were received on 12/04/2006. These drawings are acceptable.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claim 107 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
5. Claim 107 recites the limitation "the ledge" in line 1. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

7. Claims 1, 70, 93-95, 97-100, 104, and 108 are rejected under 35 U.S.C. 103(a) as being unpatentable over Altobelli (U.S. Patent 5,683,406).

Regarding claim 1, Altobelli discloses an instrument comprising a generally planar blade, a collection chamber, with an upstanding retention member, and an elongated handle coupled to the end of the collection chamber as described in the

previous office action. Regarding claim 90, Altobelli discloses a device wherein the collection chamber comprises a mixing area as described in the previous office action. Regarding claim 97, Altobelli discloses a device wherein the blade comprises stainless steel (column 6 lines 25-26). Regarding claims 98-100, Altobelli discloses a device wherein the blade includes a pair of opposing lobes disposed adjacent a longitudinal slot as described in the previous office action. Regarding claim 104, Altobelli discloses a device comprising wherein the second end comprises a protrusion for facilitating extraction of the blade from the collection chamber as discussed in the previous office action. Regarding claim 108, Altobelli discloses a device wherein the sidewalls of the collection chamber support the first end of the blade in the instrument. Altobelli fails to disclose the blade member being a unitary member, it is noted that the Altobelli device comprises several parts, i.e. the blade and blade cover, which are rigidly secured together as a single unit. Therefore, the constituent parts are so combined as to constitute a unitary whole or structure. *In re Larson*, 144 USPQ 347 (CCPA 1965).

Regarding claims 93-95, Altobelli discloses a device wherein the collection chamber is formed from a surgical grade material that is preferably in part transparent. Altobelli fails to disclose the material being stainless steel or a polymer. It would have been obvious to one having ordinary skill in the art at the time the invention was made to form the device of Altobelli from stainless steel or a polymeric plastic, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416. The examiner believes it is further obvious to form the part

from a surgical grade plastic material since the reference discloses a preferred embodiment wherein the chamber is at least partly transparent.

8. Claims 86 and 92 are rejected under 35 U.S.C. 103(a) as being unpatentable over Altobelli (U.S. Patent 5,683,406) in view of Hutson (U.S. Patent 3,299,511).

Altobelli discloses the invention as claimed except for the handle portion being coupled to the collection chamber through a flexible joint. Hutson teaches of an assembly wherein an instrument is connected to a handle by means of a swivel joint in order to allow the operator to readily turn the instrument in any direction (column 1 lines 42-51). It would have been obvious to one having ordinary skill in the art at the time the invention was made to manufacture the device of Altobelli with a swivel joint between the handle and the collection chamber in view of Hutson in order to allow the operator to readily turn the instrument in any direction.

9. Claim 102 is rejected under 35 U.S.C. 103(a) as being unpatentable over Altobelli (U.S. Patent 5,683,406) in view of Wagner (U.S. Patent 6,099,311).

Regarding claim 102, Altobelli discloses the device as claimed except for the handle portion being coupled to the collection chamber through a ball and socket joint. Wagner teaches using a ball and socket connector between a handle portion and an instrument portion of a surgical device in order to attach the handle portion to the instrument portion of the device (column 3 lines 39-51). It would have been obvious to one having ordinary skill in the art at the time the invention was made to manufacture the device of Altobelli with a ball and socket connector between the handle portion and

the collection chamber in view of Wagner in order to attach the handle portion to the collection chamber.

Allowable Subject Matter

10. Claims 53, 88, and 112-127 are allowed.
11. Claims 89, 91, 96, 101, 103, 105, 106, and 109-111 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

12. Applicant's arguments with respect to claims 1 and 70 have been considered but are moot in view of the new ground(s) of rejection. Regarding the applicant's argument that the Altobelli reference does not anticipate the structural limitation of the blade being a unitary member is persuasive. The examiner has presented a new ground of rejection under U.S.C. 103 stating it would have been obvious to make the blade and the blade cover of Altobelli a unitary piece since they are disclosed as being rigidly secured together.

Conclusion

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See PTO-892 for cited references the examiner felt were relevant to the application.
14. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nicholas Woodall whose telephone number is 571-272-5204. The examiner can normally be reached on Monday to Friday 8:00 to 5:30 EST..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on 571-272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3733

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

NWW



EDUARDO C. ROBERT
USPTO PCTM PATENT EXAMINER